

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

(1) AVIS HUNT, as Special)	
Administrator for the ESTATE)	
OF DAMON LAMONT FALLS,)	
deceased,)	
Plaintiff,)	
vs.)	CASE NUMBER
)	CIV-12-755-L
(1) DANIEL HERRING, Individually,)	
while acting under color of)	
law, as an Oklahoma City)	
Police Officer, and)	
(2) JACOB COLE, Individually,)	
while acting under color of)	
law, as an Oklahoma City)	
Police Officer, and)	
(3) ZACHARY MILLER, Individually,)	
while acting under color of)	
law, as an Oklahoma City)	
Police Officer, and)	
(4) RAMON CASTRO, Individually,)	
while acting under color of)	
law, as an Oklahoma City)	
Police Officer, and)	
(5) AARON WAKE, Individually,)	
while acting under color of)	
law, as an Oklahoma City)	
Police Officer, and)	
(6) TYLER DUNCAN, Individually,)	
while acting under color of)	
law, as an Oklahoma City)	
Police Officer, and)	
(7) THE CITY OF OKLAHOMA CITY, a)	
municipal corporation.)	
Defendants.)	

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DEPOSITION OF AARON WAKE
TAKEN ON BEHALF OF THE PLAINTIFF
ON JULY 9, 2013
IN OKLAHOMA CITY, OKLAHOMA
* * * * *

REPORTED BY: MELINDA R. NIEVEZ, CSR, RPR

1 use?

2 A None.

3 Q Do you know whether or not the use of a
4 Taser can be considered the use of deadly force?

5 A I don't know.

6 Q Do you think that it can?

7 MS. KNIGHT: Object to the form.

8 THE WITNESS: No.

9 Q (BY MR. WALSH) Have you read the policy
10 and procedures that the Oklahoma City Police
11 Department has in force and effect as it relates to
12 Taser use?

13 A No.

14 Q The mere fact that you are not certified
15 to carry a Taser, does that excuse you from reading
16 that portion of the manual?

17 MR. SMITH: Object to the form.

18 You can answer if you understand it.

19 THE WITNESS: I don't know if I'm required
20 or not to read it.

21 Q (BY MR. WALSH) Okay. Have you chosen not
22 to be Taser certified?

23 A Yes.

24 Q Why have you chosen not to be Taser
25 certified?

1 the beard. But there was certainly no statement
2 made that this man was armed?

3 A I received no statement that he was armed.

4 Q No indication from any person, prior to
5 you going into the store, that this person was
6 armed; correct?

7 A That's right. Correct.

8 Q Have you ever seen the tape from the
9 Dollar General store about the events that were
10 taking place immediately before your arrival?

11 A The video surveillance?

12 Q Yes.

13 A I have not seen it.

14 Q You've got to look at it. While
15 everyone's looking at my guy, there's three guys
16 shoplifting. Have you ever been told that?

17 A No.

18 MR. SMITH: Object to the statement.

19 MR. WALSH: Objection noted.

20 MR. SMITH: Thank you.

21 Q (BY MR. WALSH) So you get to the
22 location. What's the first thing you do?

23 A Park on the northeast corner out of sight,
24 get out of my patrol car. And I see an individual
25 on a cell phone who is pacing from the -- on the

1 northeast side. He's kind of pacing, talking on the
2 phone.

3 I immediately got out of my car and he
4 waved me over. I suspected him of being the calling
5 party, which I confirmed when he said, they're here,
6 and he hung up. I began to talk to him for just a
7 minute.

8 Q Where is Officer Castro at this point?

9 A He pulled in right behind me.

10 Q Does he go up with you to the manager?

11 A I think as I'm talking to the manager, the
12 calling party, he's proceeding to our location.

13 Q So you are out of your vehicle and
14 actually talking to this manager before you see
15 Officer Castro arrive?

16 A No. He pulled in directly behind me. I
17 just happened to pull a little bit closer and got
18 out before he did and just happened to beat him to
19 it.

20 Q Okay. What does the store manager tell
21 you?

22 A He confirms what the comments were saying
23 on the CAD call and the comments by the dispatcher,
24 that there was a suspicious black male that was
25 wearing a fake mustache and a wig, again, hovering

1 the store -- same comments we've heard. He
2 confirmed a few of those.

3 Q Well, he did not confirm a mask, did he?

4 A Not a mask. A disguise or a wig.

5 Q Okay. So did you learn anything in
6 addition to what you had learned from either the
7 radio broadcast or the notes that you had read?

8 A I don't believe so.

9 Q Okay. Do you have any discussion with
10 Officer Castro before you enter into the Dollar
11 General store?

12 A I don't believe so.

13 Q This conversation with the manager, is
14 this taking place with the two of you just standing
15 face to face, or are you guys walking into the store
16 as he's telling you this information?

17 A I believe I meet him on the very northeast
18 corner of the store. And as I'm trying to get
19 inside the store, we're talking and possibly both
20 walking towards the front of the store.

21 Q Where is the front entrance located?

22 A It's located, I believe, directly in the
23 center, facing north.

24 Q Who goes in the store first?

25 A I do.

1 Q Who follows you?

2 A I believe at least Officer Castro.

3 Q What does the manager do?

4 A I don't know.

5 Q You don't recall him going in the store
6 with you?

7 A I do not.

8 Q Where are the cashiers located in
9 relationship to these front doors?

10 A Directly at the front, probably ten
11 foot -- they're all located about ten foot behind
12 the front doors.

13 Q Do you talk to any of the cashiers before
14 you proceed further?

15 A Yeah. I looked at one of the cashiers,
16 and she just looked at me. And I said, where is he.
17 And she pointed in a southeasterly direction and
18 said towards the chemicals.

19 Q Can you describe what this cashier looked
20 like?

21 A I have no idea.

22 Q What do you do next?

23 A I look up and see Tide, chemicals, at the
24 very back of the store, which would be the south
25 wall. This store is broke up, I believe, into four

1 he's still behind you?

2 A Yes. Possibly following me in, yes.

3 Q Do you at any time see -- strike that.

4 Can you see over the shelving as you're
5 looking back into the rear of the store?

6 A Well, as you get deeper and look further
7 along -- you know, if a shelf is ten foot high, for
8 the next four or five shelves you can't see over,
9 but you can see the ceiling all the way at the back
10 because of your vision. But, no. You can't see up
11 and over. They're too high.

12 Q So you could not see anyone walking up and
13 down these aisles?

14 A No. No matter where you go in the store,
15 I believe, the aisles are too high.

16 Q When is the first time you recall seeing
17 Mr. Falls?

18 A The first time I actually knew that he was
19 the subject in question was after I got turned back
20 around and I saw him standing in the same aisle that
21 we initially started, facing to the south, talking
22 with Officer Castro.

23 Q How far was Mr. Falls and Officer Castro
24 from you when you first saw him?

25 A Within an aisle.

1 Q Officer Castro stayed right there, didn't
2 he?

3 A Yeah. He was at that time, yes.

4 Q I'm talking about the suspect.

5 A He did not attempt to flee at that time.
6 He was still looking for a way out.

7 Q Well, was he also looking at you coming
8 down the aisle?

9 A I think he had actually looked up and made
10 eye contact with me, yes.

11 Q Okay. And from the time that you saw him
12 initially until the time that you got over to where
13 he was, how much time would have elapsed?

14 A Two to three seconds.

15 Q And in that two to three seconds, you saw
16 him looking furtively for a place to escape?

17 A Yes.

18 Q You said that he was being noncompliant?

19 A Yes.

20 Q What was he doing that was noncompliant?

21 A Officer Castro, from what I heard, had
22 stated -- I believe he said, "What's going on?"

23 And the first thing that Mr. Falls says
24 is, "I ain't doing nothing," which, in my training
25 and experience, is usually a good indication that

1 somebody is doing something.

2 Based on the fact that Officer Castro
3 said, "Hey, let's go outside."

4 And he said, again, "I'm not doing
5 nothing," raising his hands, he was being --
6 actively resisting Officer Castro's commands to
7 cooperate.

8 Q Okay. And these statements and the
9 responses take place within two to three seconds?

10 A Approximately, I would say, yes.

11 Q Just the length of time from when you
12 first saw Officer Castro and Mr. Falls until the
13 time that you were able to get to him?

14 A I think I'd actually heard him before I
15 turned the corner. That's what I said. That's what
16 drew my attention to them is I heard Officer Castro,
17 "Hey, you know, what's going on?" And then my ears
18 perk up and I come actually around the corner. So
19 it's a different time frame.

20 Q And when he says, "what's going on," you
21 hear him say, "I ain't doing nothing"?

22 A Correct.

23 Q You said based upon your training and
24 experience, that means that they're generally doing
25 something. What training and experience have you

1 is that allows you to use handcuffs in a nonviolent
2 situation to conduct an investigation?

3 A No. I don't know the numbers.

4 Q And even at this point when you first see
5 Mr. Falls, you have no evidence of any crime that
6 has been committed; correct?

7 A From what I saw, I -- I saw no crime being
8 committed. Whether he had committed one before that
9 or not, I have no idea. But I personally had not
10 seen a crime committed.

11 Q And you had no knowledge that he committed
12 a crime while in this store, did you?

13 A That's correct.

14 Q Describe what happens. Now you're closing
15 the gap. As you get to where Mr. Castro is, take it
16 from there and tell me what you did.

17 A At that point I go to Officer Castro's
18 right side, and I attempt to grab Mr. Falls' left
19 wrist. And at that time I actually -- I believe I
20 actually grabbed his wrist, and he pulls away. And
21 in a flash, he had spun and he was out the front
22 door.

23 Q So when you go by Officer Castro's right
24 side, you then have to reach across -- or his left
25 hand is straight at you, isn't it?

1 gap at that point, yes.

2 Q So Officer Castro was moving forward with
3 you?

4 A At the same -- yeah. When I got level
5 with him, we both proceeded, yes.

6 Q You had not verbally said anything to
7 Officer Castro about your intentions, had you?

8 A No.

9 Q And you had never verbally told Mr. Falls
10 what you were intending to do?

11 A No, I did not.

12 Q So Mr. Falls now has turned -- or he
13 jerked loose from you, turned, and is running. What
14 happens?

15 A He runs out the front doors. Castro is
16 right after Mr. Falls. I'm directly behind Officer
17 Castro. We make it just outside of the front doors,
18 and we are running to the north -- out the front to
19 the north and begin a northwestern path through the
20 parking lot. I hear a "clank, clank." I guess
21 that's the best way you can describe it. And I look
22 and I see a black handgun fall from the front area
23 of Mr. Falls.

24 At that point -- Officers Castro is
25 probably a little bit better shape than me, freshly

1 out of the academy, roughly. And, go ahead, I'll
2 pick it up, continue with what you got. I scoop the
3 gun out. At that time I get on the radio. I don't
4 know exactly what I said. I mentioned suspect, gun,
5 running westbound on 44th Street towards Shields on
6 the south side of 44th Street. I believe I put that
7 information out. That way, it would alert other
8 officers to go ahead and start responding.

9 Q Now, at the time you hear this "clank,
10 clank," are you still inside of the store or outside
11 of the store?

12 A We are just clearing -- I'm just clearing
13 the front of the store. So hit the doors, probably
14 away from the front about eight foot, maybe. I
15 mean, just to throw something out there, maybe a
16 five- to ten-foot area. I just cleared the front of
17 the store.

18 Q Okay. Now, you heard Officer Castro say
19 they went back out and they measured, from the front
20 of the store, 16 feet out.

21 A Yes.

22 Q And that's where the gun was located.

23 A I picked it up outside of the front of the
24 store. The measurements, I would say in between 15
25 and 20 is possibly where it landed.

1 A I immediately go to Mr. Falls' left
2 shoulder blade, and I believe I put my right knee in
3 the left portion of his shoulder blade to try to
4 stabilize him.

5 Q What do you see Mr. Falls doing at this
6 point?

7 A He is actively kicking. Not that he's
8 trying to get up, but he's reaching for something,
9 moving around. His hands keep going deeper, in and
10 out just a little bit. He's just moving side to
11 side.

12 Q Now, you can't see his hands, can you?

13 A I can see from about his forearms up to
14 his arms.

15 Q And when you're talking about forearms,
16 you're talking about several inches above the wrist
17 that you're seeing?

18 A Yes. Just what -- yeah. About here,
19 correct.

20 Q Give me your best estimate as to the
21 distance of the forearm that you're seeing.

22 A It could have gone anywhere from two to
23 three inches above the wrist up to about two or
24 three inches below the elbow. Just that motion
25 of --

1 with . . .

2 Q Who did you get a ride with?

3 A It's in my report, but I can't think of
4 his last name.

5 Q At what time do you seek help from the
6 paramedics?

7 A I get back in my car -- or get back in --
8 I get a ride to the Dollar General. I go get the
9 calling party's information, get a drink of water,
10 get back in my car. I can't seem to cool off. I
11 can't catch my breath. My heart is just racing 100
12 miles an hour.

13 And then I drive down to an ambulance that
14 was already there, and I'm sitting in my car with
15 the air conditioner full blast. And it's just hot
16 and I can't cool off and something just didn't feel
17 right. So that's when I got out there and said,
18 hey, I can't -- my heart rate, it won't stop. They
19 said, well, come on up here.

20 I believe one paramedic had actually
21 walked off -- there was a female paramedic in the
22 truck. At that time the male paramedic wasn't by
23 the back truck. I'm not sure where he was.

24 I couldn't cool off. And he come back and
25 said, hey, go ahead and hook him up to an EKG. And,

1 oh, we don't need to do that, that's not necessary.
2 They ended up talking me into it.

3 My heart was 140 and for several, several
4 minutes it wouldn't drop. I mean, it was 140. They
5 said that wasn't -- that wasn't normal. Usually,
6 your heart rate should start dropping. At that time
7 they're monitoring me with the EKG.

8 I think somebody called -- somebody runs
9 back to the back of the truck, EMSA truck, to get
10 the paramedic -- the male paramedic. He disappears,
11 comes back, and says something to the effect of,
12 give me this, this, this, and this. And at that
13 time I knew something with somebody wasn't right.
14 And I pull all the leads off of me and go, do what
15 you got to do, I'm okay. And then they -- everybody
16 focuses their attention to where Mr. Falls is at
17 that time.

18 Q At the time that you go to your car and go
19 back to the Dollar General store, is Mr. Falls still
20 handcuffed using two handcuffs?

21 A I don't know.

22 Q Do you ever recall there being a hinged
23 set of handcuffs replacing the two handcuffs?

24 A No, sir.

25 Q As far as any events taking place where